

Steven W. Troxler Commissioner

# North Carolina Department of Agriculture and Consumer Services

State Veterinarian

David T. Marshall, DVM

Veterinary Division

June 23, 2010

Ms. Jeanette Baldwin Urban Dog Outsitters 7051-A Cliffdale Road Fayetteville, NC 28314

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Re: REVOCATION OF BOARDING KENNEL LICENSE

Urban Dog Outsitters

Boarding Kennel License no. 10732

Dear Ms. Baldwin:

This letter is an Order issued pursuant to N.C. Gen. Stat. § 19A-30 concerning your operation of an boarding kennel under license from the Animal Welfare Section of the North Carolina Department of Agriculture and Consumer Services ("NCDA&CS) pursuant to N.C. Gen. Stat. § 19A-28. Your boarding kennel, Urban Dog Outsitters, has failed inspections conducted by this Section on:

December 1, 2009 and June 17, 2010

pursuant to the requirements set forth under the NC Animal Welfare Act. The inspection reports you received on those dates constitute written notice to you indicating how you are failing to satisfy the requirements for holding a certificate of registration for the above-named animal shelter as required by N.C. Gen. Stat. § 19A-30. You have been provided with the NC Animal Welfare and Act the rules establishing facility standards there under with your certification application.

To date, your facility has failed inspection demonstrating serious deficiencies in the conditions in which your animals are kept and the care that they receive. These deficiencies are described in detail by the above-referenced inspection reports. For the reasons set forth in your last inspection report, your license is hereby REVOKED for failure to comply with the requirements set forth in N.C. Gen. Stat. § 19A-30(2) and (3). You are required to surrender your license certificates to the Section or its designated representative within five days of your receipt of this notice.

You may contest this decision by filing a petition under the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-23, within five (5) days of your receipt of this Order. Please find enclosed information on filing said petition.

Therefore, you are notified to CEASE AND DESIST operation of a boarding kennel immediately upon receipt of this letter. If you are found operating a boarding kennel following your receipt of this letter, the NCDA&CS has the authority to impose a civil penalty of up to five thousand dollars (\$5,000.00) pursuant to:

### § 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

Sincerely,

Dr. Lee Hunter, DVM,

Director, Animal Welfare Section Veterinary Division, NCDA&CS

Enclosures:

1) Inspection Report;

2) Appeal Information

cc:

David McLeod, Assistant Commissioner, NCDA&CS Dr. David Marshall, State Veterinarian, NCDA&CS Barry Bloch, Assistant Attorney General, NCDOJ

#### APPEAL INFORMATION

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. Gen. Stat. § 150B-23. The petition must be accompanied by a filing fee of twenty dollars (\$20.00) payable to the N.C. Office of Administrative Hearings. Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings.

File the petition and one copy with:

Office of Administrative Hearings 6714 Mail Service Center Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone 919/733-0926. You must serve NCDA&CS by mailing a copy of the petition to:

Mr. Ray Starling
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Type of Inspection  New  Annual  Follow-Up  (Prev. Inspection Date)  Complaint	NCDA&CS, VETERINA ANIMAL WELFAR 1030 MAIL SERVIC RALEIGH, NC 2 PHONE: 919/715-7111, F.	E SECTION E CENTER, 7699-1030	INDOOR DOUTDOOR DOTH
Courtesy 🗗	ANIMAL WELFARE	INSPECTION	ENTERED E4/11/10)D
GPS Coordinat	es - N: 35 06 197	W: 79.	01697
LICENSE #: 10732 TYPE FACILITY: Animal S	helter (Private/Public) □ Boardi	ng Kennel	Public Auction □
DUSINESS NAME: Urb	an Dog Cutsitten	1	
OWNER: Jeanette Bal	Idwin	200	
TELEPHONE: (\$10 ) 8-2	Hiddle Rd. Fay, Ut =	8314	
VMO Munder	2 264 /		
COUNTY Cum berland			
Number of Primary Enclosure	es Animals Pre	sent: Dogs	Cats 📿
	Inspector: Mark "X" in each l Circle each item nu Use NA if not applie	mber, if inadequate.	
STRUCTURE	SANITATION		CIAL ITEMS
Housing Facilities  1 Structure & Repair Door 2. Ventilation & Temp. Head 3. Lighting K-9 Rm. Light 4. Ceiling, Wall, Floors Door 5. Storage Ch. 6. Water Drainage	oct   13.   Ceiling   Wal	psal Fride + Outsid Reconfirm + Fecas 24.  1. Floors Fund 25.  1. Supplies Dirty 27.  Sinks, Basins dir 28.  In Control Relent dropping frounds Dirty Kennels	Description of Animals Groups Record Vet Treatment Vo Record Origin/Disposition For Copy Signature (boarding kennel) Written permission from

Primary Enclosures Outside Charlink
7 Structure & Repair Roplan Gotes

8. Space

10. Adequate Shelter Outside Poor Shade No dos house

719. Adequate Feed/Wate

22. Ratio of 1:10 personnel to animals if >4 in primary

> enclosure or common area Animals' Appearance - Appeared Hungry

29. Care in Transit Discussed

= 21. Personnel-Notcopobable of taking can of dogs + cate

30. Isolation Facility □ 31.) No Signs of Illness/

Treated Arrived 69:301

Date (17) oTime 3:00,00

Owner/Authorized Agent's Signature

Inspector's Signature AW-2

Rev. 1/07

□ APPROVED

White= Office

Canary= Inspector

Pink= Owner

PAGE OF 3

## ANIMAL WELFARE SECTION, 1030 MAIL SERVICE CENTER, RALEIGH, NC 27699-1030

PHONE: 919/715-7111, FAX: 919/733-6431

# ANIMAL WELFARE INSPECTION CONTINUATION PAGE

LICENSE #: 10732
TYPE FACILITY: Animal Shelter (Private/Public)   Boarding Kennel Pet Shop   Public Auction
BUSINESS NAME: Orban Dog Ortsitters
OWNER:
ADDRESS: Ont.
TELEPHONE: ( ) -
TEBETHONE.
Item Number Explanation of Inadequacy (circled items above) And Date Corrections
Recommendation For Compliance Must Be Completed
Today's inspection is in reference to a complaint tiled by Mr. John Grando
Mr. Grando Stated that when he picked his dos up from a 3 day stay at UDO
he tound his dog severly dehydrated it had some on her paws legs and mouth
and she also had coked feres into her pows and abus, Mr. Fronds Stated he reported this to the business and he was "blown off" and given the reason for
Figurated This to the business and he was blown off and given the reason for
the Condition was the do was last on Concrete for 3 days.
No one Was on site (the doors were all 3 locked) at 9:30Am. Posted hours st
the Kennel opens at 8:30 Am. Uwner's son arrived at 1:25 pm - I writed sine 9:30
One Airelate Golden mix mole adult dog was housed in an outside Chair link run. The
COE CALCIND LIGHT CONTROL CONT
for water. There were several Piles of faces in the run part of which looked
more than one day old. The dog was thin but did not appear amaciated atth
more than one day old. The dog was thin but did not appear emaciated atthe it did eagerly accept some treats given by Cumberland OAC Cruely Officers. The dogs water pans were filled. A torn tarp gave shade to this run. This run
dogs water pans were tilled. A torn terp gave shode to this run. This run
was inside an un-locked gate. There did not appear to be any leisons or some on the dos other than 2 areas - one on each frontly - that it appeared the dos had
on the dog other than 2 areas - one an each frontly - that it appeared the dog had
Deen licking cot.
Two Cate were housed in the Front windows Cot room of the tacility. The CUA
which is required for all rate and dogs that have access to a window was partially Closed. A gray or white tabby as Hand a block dath could be seen. They both appeared thin. Food or water bowls could not be seen nor the litter pom.
partially Closed. A gray & white tabby as Hand a block det Could be seen. They
both appeared thin. Food + water bowls could not be seen nor the litter Don.
Un entry of 1:30pm when Jarred the Juners son arrived I observed no
tood or water for the cots and the litter pan was full.
Animal Control Come before Jarred or the landland come. *
Animal Control Officers Pendleton + Perking Come of my regulat to access the
Scene. They determined at that time this was not a cruetty issue due to the
Conditions they were housed in and until a notice was left it was not vet
Considered abandonment. Animal Control will be notified the Owner's Son
did show up. The land land was also called and come by to make I had
cained entry to the building.
Same Citty to the Boreing.
□ APPROVED □ CONDITIONALLY APPROVED □ DISAPPROVED □ Date 1/1/10 Time 3:00 Pro
In the factor
Inspector's Signature Owner/Authorized Agent's Signature
AW-2 Rev. 1/07 White= Office Canary= Inspector Pink= Owner
PAGE Q OE

## ANIMAL WELFARE SECTION, 1030 MAIL SERVICE CENTER, RALEIGH, NC 27699-1030

PHONE: 919/715-7111, FAX: 919/733-6431

## ANIMAL WELFARE INSPECTION CONTINUATION PAGE

LICENSE #: <u>/o</u>			L	
TYPE FACILITY	<b>Y: Animal Shelter (Private/P</b>	ublic) 🏻 Boarding	Kennel Pet Sho	p 🗆 Public Auction 🗆
BUSINESS NAM	E: Urban Dog	Ostsitters	· 1	
OWNER:			, page 10 and	
ADDRESS:				
TELEPHONE: (		ont		
tem Number		nadequacy (circled i		Date Corrections Must Be Completed
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LAG CA	d Sinus burn, a s	of lights	not working	helf of the bles and tub along
ennel doors	discssemble 7	trosh under	the feed to	ables and tub clone
with lots e	pen closed. The	s. A hole	in the wall,	under the tub
had not b	pen closed. The	bathroom h	and a Pile of	dried tens and
lomit trom	o got on the +	Moor. When	turned losse Th	e ever + white Oct
becom estine	the dried vomited	find. The	once + white	Cot did not look
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103 Comojus	molding too.		II Own I	S +
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Public Door	uding Kennel. The	T The consinul	Munery entr	rested him to care
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been Seen i	and noted to Pr	rove the per	sonnel of th	is tacility are
ncapable	of perterming Y	he necessory	Yorks required	1 to Core for these
animals.			·	
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1W-2				
Rev. 1/07	White= Office	Canary= Inspect	or Pir	nk= Owner

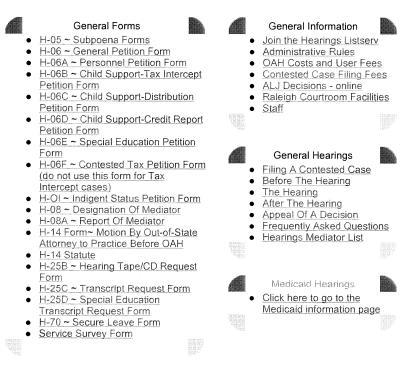
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#### **Hearings Division - Home Page**

The information on this page is for all general administrative hearings, except for Medcaid hearings which follow a simplified procedure. If your case concerns denial or modification of Medicaid services, click here.

OAH filling fees for certain contested cases are now in effect. Specific case types and associated fees can be seen by <u>clicking</u> here.



Hearings Division and Clerk's Office: 919-431-3000 Fax: 919-431-3100

The Hearings Division provides a forum for an independent hearing before an administrative law judge when a dispute with a state agency involving a person's rights, duties or privileges cannot be resolved through informal procedures. The statutory procedures governing Administrative Hearings before OAH are found in Articles 3 and 3A of Chapter 150B, the Administrative Procedure Act (APA). The regulatory procedures are found in Title 26. Chapter 3 of the North Carolina Administrative Code.

You may be represented by an attorney at your administrative hearing or you may appear on your own behalf, unless you are a corporation. If you are a corporation, you must be represented by an attorney. It is up to you to decide whether you will retain an attorney. OAH cannot advise you on this decision and cannot recommend an attorney. You may not be represented by anyone who is not an attorney.

There are filing fees for certain types of contested cases - see <u>OAH Contested Case Filing Fees</u> for a representative list of fees. You may petition OAH to waive the filing fee in cases of financial hardship prior to filing your case. Once your hearing is scheduled, there is a cancellation fee if you cancel the hearing less than 24 hours before its scheduled time. There is also a fee to obtain a copy of the hearing's transcript or audio recording.

The Office of Administrative Hearings maintains an email notification list to send notice of new Hearings rules or procedures and to send any other information the Chief Administrative Law Judge determines is helpful to the listserv subscribers. To subscribe or unsubscribe to the NC Hearings listserv, please use the web form found at the following link: <a href="http://lists.ncmail.net/mailman/listinfo/hearings.interestedpersons">http://lists.ncmail.net/mailman/listinfo/hearings.interestedpersons</a>.

#### **FILING A CONTESTED CASE**

To begin a contested case, a <u>petition</u> must be filed with OAH. Filing fees, if required, must accompany the petition form. An indigent status petition may be filed before the contested case petition to request a waiver of the filing fee. Petition forms are available through this web site by clicking on the word "petition" in the first sentence of this section, or by contacting the Office of Administrative Hearings. It is not required that petitions be filed on this form, but use of the form may assure that you include all necessary information. An **original and one copy** of the petition must be filed at OAH, and a copy must be served on the opposing party. In serving a copy of the petition on a state agency, be sure to follow the instruction provided in any notice received from that agency. OAH requires that you file an **original and one copy** of any document filed in your case, and an additional copy must be sent to the opposing party.

#### **BEFORE THE HEARING**

Once the petition has been filed, it is given a docket number and assigned to an Administrative Law Judge (ALJ). The docket number will appear in the upper right-hand corner of all documents received from OAH. You **must** use this docket number to properly identify all pleadings or correspondence submitted for filing in your contested case file. A "Notice of Contested Case and Assignment" is sent to all parties. This notice will show the name of the ALJ who has been assigned to the case and will require that the agency submit any document which caused the filing of the contested case.

If you have an attorney, all correspondence or documents will be mailed to your attorney. Attorneys must file a Notice of Representation which indicates the name, address, telephone number and State Bar Number of the attorney representing each party.

If you do not have an attorney, all correspondence or documents will be mailed to you at the address you provide OAH. YOU MUST KEEP OAH INFORMED OF YOUR CURRENT MAILING ADDRESS AND TELEPHONE NUMBER.

Soon after filing a petition, you may be notified that your case has been selected for a mediated settlement conference. A mediated settlement conference is a prehearing conference conducted by a neutral person, known as a mediator, who acts to encourage and facilitate settlement of the case. If your case is sent to a mediated settlement conference, you and the other party must agree on a mediator. OAH maintains a <u>directory of mediators</u> to assist you with this decision. This directory is available through this web site by clicking on "directory of mediators" in the previous sentence or by contacting the Office of Administrative Hearings. If you are unable to agree, the presiding ALJ will choose a mediator for you. In either circumstance, the petitioner's attorney shall file a <u>Designation of Mediator</u> form with the presiding ALJ. This form is normally mailed with the Order of Mediation. A copy is available by clicking on "Designation of Mediator" in the prior sentence. The parties are required to pay the cost of the mediated settlement conference. At the close of the mediated settlement conference, the mediator will file a written report with the presiding ALJ as to whether or not an agreement was reached by the parties. The report is made through a <u>Report of Mediator</u> form. This form is available by clicking on "Report of Mediator" in the prior sentence or by contacting the Office of Administrative Hearings. (As an alternative to mediation, you may be notified that an Administrative Law Judge will conduct a settlement conference.)

A prehearing request to the ALJ for any action in a contested case must be made by filing a written motion. If a party files a motion, the other party has ten (10) days to respond. The ALJ will rule on all motions.

Before the contested case hearing, the ALJ may require the parties to file a Final Prehearing Order. This document sets out the issues which are agreed upon by the parties and identifies the witnesses and exhibits which each party will offer at the hearing.

Each party is responsible for arranging for the appearance of their witnesses. If you want to ensure the presence of your witnesses, you must <a href="mailto:subpoena"><u>subpoena</u></a> them. Subpoena forms with instructions are available through this web site by clicking on the word subpoena in the previous sentence or by contacting the Office of Administrative Hearings.

Not less than 15 days before the hearing, you will receive a Notice of Hearing. This Notice will be sent by certified mail to all parties and establishes among other things, the time, date and location of the hearing.

A hearing may be continued or postponed but only for good cause. A request for a continuance of a hearing must be made before the hearing by written motion to the ALJ and must be served on all parties.

#### THE HEARING

The hearing is open to the public except in limited instances.

At the hearing, each party has the right to testify on his or her own behalf. Each party may also offer documents in evidence; have witnesses testify; question an opposing party's witnesses; and explain or rebut evidence. Additional courtroom facilities are available for cases which are held in Raleigh (see Raleigh Courtroom Facilities).

In advance of the hearing you must prepare at least **two copies** of each exhibit which you intend to offer into evidence. Those exhibits admitted into evidence will be retained in the official record.

The hearing is recorded by either a hearing assistant using a 4-track recorder (there is **no** appearance fee for a hearing assistant), or a court reporter, but the party requesting a court reporter **must pay** the reporter's appearance fees.

You may purchase a transcript of the hearing recorded by a hearing assistant, by contacting Associated Court Reporters in Charlotte at 704/364-8382. Depending on the length of the hearing, some transcripts may be expensive, but transcripts become part of the official OAH record on appeal. Copies of the cassette tapes or CD's from which the transcripts are made are also available from OAH at a much lower cost, but these recordings are not considered part of the official record. If your hearing is recorded by a court reporter, requests and payment for copies of the transcript must be made directly with the court reporter.

#### AFTER THE HEARING

The Administrative Law Judge's Decision is made in writing and contains findings of fact and conclusions of law. The state agency involved will make the Final Agency Decision but must adopt the ALJ's decision unless it is clearly contrary to the preponderance of the evidence.

The ALJ has 45 days from the end of the hearing (or from the date of post-hearing submissions) to issue the ALJ's Decision. The ALJ Decision is sent to the parties and a copy, as well as the Official Record, is sent to the final decision maker.

Before the agency issues a Final Decision, both Parties will be given an opportunity to file exceptions and written arguments with the final decision maker.

#### APPEAL OF A DECISION

A party may appeal a Final Decision within 30 days after being served with a written copy of the decision by filing a Petition for judicial review in the Superior Court of Wake County or in the Superior Court of the county where the person appealing resides.

THE MATERIAL PRESENTED AT THIS WEB SITE IS PROVIDED TO THE PUBLIC FOR INFORMATIONAL PURPOSES ONLY AND IS NOT INTENDED AS LEGAL ADVICE. NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO BIND THE PRESIDING ADMINISTRATIVE LAW JUDGE OR OAH TO ANY PRACTICE DESCRIBED HEREIN.

#### NORTH CAROLINA ADMINISTRATIVE CODE TITLE 26 OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 3 HEARINGS DIVISION

#### **SECTION .0100 - HEARING PROCEDURES**

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.0101 GENERAL
.0102 DEFINITIONS AND CONSTRUCTION
.0103 COMMENCEMENT OF CONTESTED CASE: NOTICE AND FILING FEE
.0104 ORDER FOR PREHEARING STATEMENTS
.0105 DUTIES OF THE ADMINISTRATIVE LAW JUDGE
.0106 CONSENT ORDER: SETTLEMENT: STIPULATION
.0107 SETTLEMENT CONFERENCE
.0108 PREHEARING CONFERENCE
.0109 NOTICE OF HEARING
.0110 DISQUALIFICATION OF ADMINISTRATIVE LAW JUDGE
.0111 CONSOLIDATION OF CASES
.0112 DISCOVERY
.0113 SUBPOENAS
.0114 SANCTIONS
.0115 MOTIONS
.0116 TIME
.0117 INTERVENTION
.0118 CONTINUANCES
.0119 SECURE LEAVE PERIODS FOR ATTORNEYS
.0120 RIGHTS AND RESPONSIBILITIES OF PARTIES
.0121 WITNESSES
.0122 EVIDENCE
.0123 OFFICIAL RECORD
.0124 VENUE
.0125 CONDUCT OF HEARING
.0126 HEARING OFFICER'S PROPOSAL FOR DECISION: EXCEPTIONS .0127 EX PARTE COMMUNICATIONS
.0128 ADMINISTRATIVE LAW JUDGE'S DECISION
.0129 RECONSIDERATION OR REHEARING
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.0130 AVAILABILITY OF COPIES .0131 FINAL DECISIONS IN CONTESTED CASES

#### **SECTION .0200 - MEDIATION SETTLEMENT CONFERENCE**

.0201 ORDER FOR MEDIATED SETTLEMENT CONFERENCE
.0202 SELECTION OF MEDIATOR
.0203 MEDIATION SETTLEMENT CONFERENCE
.0204 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS
.0205 SANCTIONS FOR FAILURE TO ATTEND
.0206 AUTHORITY AND DUTIES OF MEDIATOR
.0207 COMPENSATION OF THE MEDIATOR
.0208 MEDIATOR

#### SECTION .0300 - EXPEDITED HEARING PROCEDURES FOR COMPLEX CONTESTED CASES

.0301 ORDER DESIGNATING COMPLEX CONTESTED CASES
.0302 FACTORS TO BE CONSIDERED
.0303 VENUE
.0304 EXPEDITED HEARING PROCEDURES FOR COMPLEX CONTESTED CASES
.0305 RULES AND PROCEDURES

#### SECTION .0400 - SIMPLIFIED PROCEDURES FOR MEDICAID APPLICANT AND RECIPIENT APPEALS

This section and all the rules within this section (.0401 - .0403) do not apply to non-Medicaid cases.

.0401 HEARING PROCEDURE RULES
.0402 MEDIATION SETTLEMENT CONFERENCE RULES
.0403 EXPEDITED HEARINGS PROCEDURES FOR COMPLEX CONTESTED CASES

| <u>OAH Home</u> | <u>Hearings</u> | <u>Rules</u> | <u>Civil Rights</u> | <u>Forms</u> | <u>Links</u> | <u>Privacy Policy</u> | <u>Disclaimer</u> | If you have any questions or comments, please e-mail: <u>oah.postmaster@oah.nc.gov</u>